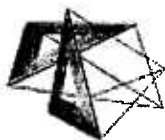


05-M-0858

Corresp.



Jaclyn Brilling/Exec/NYS DPS

07/06/2006 04:54 PM

To Ellen Jeffers/Exec/NYS DPS@NYS DPS, Lynn  
Adriance/Exec/NYS DPS@NYS DPS, Elaine  
Lynch/Exec/NYS DPS@NYS DPS  
cc Laurie Cornelius/Exec/NYS DPS@NYS DPS

bcc

Subject Fw: ESPI Contracts

This document IS flagged as a record

Jaclyn A. Brilling  
Secretary to the Commission  
NYS Department of Public Service  
Tel. (518) 474-6530

----- Forwarded by Jaclyn Brilling/Exec/NYS DPS on 07/06/2006 04:54 PM -----



"Dr. Franklin C. Lewis" <f Lewis@yesespi.com>

07/06/2006 03:00 PM

To <jaclyn\_brilling@dps.state.ny.us>

cc <paul\_emerson@dps.state.ny.us>

Subject ESPI Contracts

Dear Ms. Jaclyn Brilling,

Paul Emerson indicated that I should forward to you copies of ESPI  
residential and non residential agreement documents. They are attached.

Cordially,

Frank

Dr. Franklin C. Lewis, President & CEO  
Energy Services Providers, Inc. (ESPI)  
Phone (866) YES-ESPI Fax (800) 851-4168  
Direct Number (802) 447-1141  
Mobile (860) 670-5888



ESPI Disclosure Commercial 7 6 06.doc ESPI Disclosure Residential 7 6 06.doc

## Energy Services Providers, Inc. Non Residential Disclosure Statement and Contract Terms

**Purpose of this Statement:** This statement contains information the New York Public Service Commission requires that you be given concerning electric services provided by Energy Services Providers, Inc. (ESPI) to customers in New York State, including the terms and conditions of ESPI's services to you, and constitutes the agreement between you and ESPI.

**Office locations and hours:** Our office is located at RPI Technology Park, 120 Defreest Drive, Troy, NY 12180. Normal office hours are 8:30 AM To 5 PM Monday through Friday. A request for information or other service can be made by calling (866) YES-ESPI or (866) 937-3774 at any time, seven days a week, 24 hours a day.

**Meter Reading, Billing and Payment:** The utility will continue to read your electric meter at regular intervals and will send you a single bill, all just the same way as it did before you switched to ESPI. When regular meter readings are not available, the utility will provide estimated usage to establish the utility's charges and ESPI's charges for the electricity, capacity and other services we provide to you. The utility's charges and our charges will be adjusted on a subsequent bill based on the usage shown once an actual meter reading is made. ESPI, at its sole and absolute discretion and option, may elect to bill you directly for electricity supplied, in which event thereafter you will receive a bill from ESPI for electricity supply and one from your utility for transportation and distribution. In that case, you would pay ESPI's charges to ESPI and you would pay the utilities charges to the utility. Payments in either case would be due on the date stated on the bill, but in no event sooner than 10 days from postmark.

**Charges:** The price for electric commodity for the first two billing cycles that this agreement is in effect shall be seven percent (7%) less than the price you would have paid had your utility been your supplier. After the first two billing cycles, the price for electricity sold under this agreement shall be a variable price per kilowatt hour of usage based upon the market price of electricity. ESPI may change its pricing structure by giving you 15 days written notice of any such price change. That notice will be provided at least 30 days prior to the next scheduled meter read for your account. You may cancel this agreement any time within the 15 day notice period and not be bound by any price change. The price you pay for electricity supply will include all applicable taxes, together with any charges imposed on ESPI by the utility. If you claim exemption from any taxes, you must provide the ESPI a proper exemption certificate.

**TERM:** The term of the sale agreement shall be month-to-month, allowing either party to cancel upon notice consistent with that term.

**Termination:** Both you and ESPI reserves the right to terminate our agreement for any reason at its or your absolute discretion without any payment or penalty. If notice of cancellation is not given by you at least 15 days prior to the next scheduled meter reading, you may request a special meter reading, which is typically subject to a service charge.

**Switching:** There are no costs or fees for switching to ESPI or for switching from ESPI back to the utility or to another supplier. ESPI will notify the utility that you have switched to ESPI. ESPI will notify the utility in the event you switch back to the utility or to another supplier and you will be rendered a final bill for services up to the time you begin to receive supply from the utility or another supplier.

**Generation of Electricity Provided:** The electricity supplied by ESPI under this agreement may be generated by any electrical generation resource authorized by the State of New York.

**Firm Sales:** Sales under this agreement are made on a "firm" basis. If the ESPI fails to deliver electricity for reasons other than force majeure, as defined below, you shall be entitled to damages equal to your "cost of cover" less any expenses saved. Neither you nor ESPI shall be liable to the other for incidental, consequential or punitive damages or lost benefits or profits. As between You and ESPI, title, possession, and control of the energy shall pass from ESPI to you at point where the energy first enters a transmission system.

**Agency Authorization/Billing:** You hereby elect ESPI as agent to arrange transmission and other services for the purpose of serving your account. You also hereby authorize ESPI to obtain copies of all electric bills and consumption and payment information from the utility. In the event this agreement is assigned, then the information obtained may be provided to the assignee.

**Force Majeure:** If either party is unable to perform its obligations under this agreement due to force majeure, performance of such obligations shall be suspended until the force majeure is corrected. Force majeure shall mean acts of God, strikes, lightning, fires, floods, explosions, storms or storm warnings, breakage of machinery or pipelines or generating equipment, laws, rules, regulations or orders of any government, agency, political subdivision or instrumentality thereof having jurisdiction; injunction or judicial restraints; failure of electric supply, failure or curtailment of firm transmission, and any other cause not within the control of the party claiming force majeure.

**Assignability:** This Contract cannot be assigned by the customer without the written consent of ESPI. This Contract may be assigned by ESPI to another party without your consent provided that the assignee is authorized to sell electricity in New York State. ESPI is required to give you at least 30 days notice of any such assignment and that notice must be given at least 30 days before a meter read.

**No Warranties are Provided:** ESPI provides no warranty, express, implied, statutory, or of any manner, type or form whatsoever in this agreement or in any communication from ESPI or its agents. ESPI specifically disclaims the providing of any warranty of merchantability and fitness for a particular purpose.

**Agreement Modification:** Aside from modifying the price as stated above, this agreement cannot be modified by ESPI without your affirmative consent documented electronically, or in writing, or through a recorded telephone call.

**Dispute Resolution:** The Department of Public Service will not resolve disputes associated with the services provided under this sales agreement. However, the DPS will monitor inquiries and contacts from Non-Residential customers regarding energy service companies and an excessive number of confirmed complaints may result in an energy service company no longer being eligible to supply electricity or natural gas in New York State. The New York State Department of Public Service, Office of Consumer Services can be reached: by telephone toll free at 1-888-697-7728; in writing at: New York State Public Service Commission, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223; or by visiting [www.dps.state.ny.us](http://www.dps.state.ny.us). If the Dispute can not be settled in 15 days either party may present the dispute to a venue of competent jurisdiction for review such as small claims court, mediation, arbitration, etc. Should you have any questions or require additional information regarding this agreement, you can contact ESPI at (866) YES-ESPI (that is (866) 937-9774) or email us at [ESPI@YESESPI.com](mailto:ESPI@YESESPI.com).

## Energy Services Providers, Inc. Residential Disclosure Statement and Contract Terms

**Purpose of this Statement:** This statement contains information the New York Public Service Commission requires that you be given concerning electric services provided by Energy Services Providers, Inc. (ESPI) to customers in New York State, including the terms and conditions of ESPI's services to you, and constitutes the agreement between you and ESPI.

**Office locations and hours:** Our office is located at RPI Technology Park, 120 Defreest Drive, Troy, NY 12180. Normal office hours are 8:30 AM To 5 PM Monday through Friday. A request for information or other service can be made by calling (866) YES-ESPI or (866) 937-3774 at any time, seven days a week, 24 hours a day.

**Home Energy Fair Practices Act (HEFPA):** Please be aware that you have certain rights under the Home Energy Fair Practices Act, also known as "HEFPA". Your rights are protected by the New York Public Service Commission. You will receive various notices of your rights from the utility that send you the bill for delivery and supply of electricity.

**Meter Reading, Billing and Payment:** The utility will continue to read your electric meter at regular intervals and will send you a single bill, all just the same way as it did before you switched to ESPI. When regular meter readings are not available, the utility will provide estimated usage to establish the utility's charges and ESPI's charges for the electricity, capacity and other services we provide to you. The utility's charges and our charges will be adjusted on a subsequent bill based on the usage shown once an actual meter reading is made. ESPI, at its sole and absolute discretion and option, may elect to bill you directly for electricity supplied, in which event thereafter you will receive a bill from ESPI for electricity supply and one from your utility for transportation and distribution. In that case, you would pay ESPI's charges to ESPI and you would pay the utilities charges to the utility. Payments in either case would be due on the date stated on the bill, but in no event sooner than 10 days from postmark.

**Charges:** The price for electric commodity for the first two billing cycles that this agreement is in effect shall be seven percent (7%) less than the price you would have paid had your utility been your supplier. After the first two billing cycles, the price for electricity sold under this agreement shall be a variable price per kilowatt hour of usage based upon the market price of electricity. ESPI may change its pricing structure by giving you 15 days written notice of any such price change. That notice will be provided at least 30 days prior to the next scheduled meter read for your account. You may cancel this agreement any time within the 15 day notice period and not be bound by any price change. The price you pay for electricity supply will include all applicable taxes, together with any charges imposed on ESPI by the utility. If you claim exemption from any taxes, you must provide the ESPI a proper exemption certificate.

**TERM:** The term of the sale agreement shall be month-to-month, allowing either party to cancel upon notice consistent with that term.

**Termination:** Both you and ESPI reserves the right to terminate our agreement for any reason at its or your absolute discretion without any payment or penalty. If notice of cancellation is not given by you at least 15 days prior to the next scheduled meter reading, you may request a special meter reading, which is typically subject to a service charge.

**Switching:** There are no costs or fees for switching to ESPI or for switching from ESPI back to the utility or to another supplier. ESPI will notify the utility that you have switched to ESPI. ESPI will notify the utility in the event you switch back to the utility or to another supplier and you will be rendered a final bill for services up to the time you begin to receive supply from the utility or another supplier.

**Generation of Electricity Provided:** The electricity supplied by ESPI under this agreement may be generated by any electrical generation resource authorized by the State of New York.

**Firm Sales:** Sales under this agreement are made on a "firm" basis. If the ESPI fails to deliver electricity for reasons other than force majeure, as defined below, you shall be entitled to damages equal to your "cost of cover" less any expenses saved. Neither you nor ESPI shall be liable to the other for incidental, consequential or punitive damages or lost benefits or profits. As between You and ESPI, title, possession, and control of the energy shall pass from ESPI to you at point where the energy first enters a transmission system.

**Agency Authorization/Billing:** You hereby elect ESPI as agent to arrange transmission and other services for the purpose of serving your account. You also hereby authorize ESPI to obtain copies of all electric bills and consumption and payment information from the utility. In the event this agreement is assigned, then the information obtained may be provided to the assignee.

**Force Majeure:** If either party is unable to perform its obligations under this agreement due to force majeure, performance of such obligations shall be suspended until the force majeure is corrected. Force majeure shall mean acts of God, strikes, lightning, fires, floods, explosions, storms or storm warnings, breakage of machinery or pipelines or generating equipment, laws, rules, regulations or orders of any government, agency, political subdivision or instrumentality thereof having jurisdiction; injunction or judicial restraints; failure of electric supply, failure or curtailment of firm transmission, and any other cause not within the control of the party claiming force majeure.

**Assignability:** This Contract cannot be assigned by the customer without the written consent of ESPI. This Contract may be assigned by ESPI to another party without your consent provided that the assignee is authorized to sell electricity in New York State. ESPI is required to give you at least 30 days notice of any such assignment and that notice must be given at least 30 days before a meter read.

**No Warranties are Provided:** ESPI provides no warranty, express, implied, statutory, or of any manner, type or form whatsoever in this agreement or in any communication from ESPI or its agents. ESPI specifically disclaims the providing of any warranty of merchantability and fitness for a particular purpose.

**Agreement Modification:** Aside from modifying the price as stated above, this agreement cannot be modified by ESPI without your affirmative consent documented electronically, or in writing, or through a recorded telephone call.

**Dispute Resolution:** In the event of a billing dispute or a disagreement involving ESPI's service, the parties will use their best efforts to resolve the dispute. You should contact ESPI in writing at the address set forth above. ESPI shall endeavor to resolve any inquiry or complaint that you may have fairly and in an efficient and timely manner. If a residential dispute is not resolved in 15 days, it may be submitted by either party to the DPS for resolution pursuant to its Complaint Handling Procedures as described in the "Consumer Protections" section herein which are governed by the Home Energy Fair Practices Act. Should you have any questions or require additional information regarding this agreement, you can contact ESPI at (866) YES-ESPI (that is (866) 937-9774) or email us at [ESPI@YESESPI.com](mailto:ESPI@YESESPI.com). You may also request information from the New York State Public Service Commission. The New York Public Service Commission monitors, addresses and resolves complaints against utilities and non-utility energy service providers such as ESPI. An excessive number of complaints may result in a non-utility energy service (ESCO/Marketer), such as ESPI, no longer being eligible to supply electricity in New York. The New York Public Service Commission's toll-free complaint monitoring number is 1-888-697-7728, or you may write the Department of Public Service at the Office of Consumer Services, Three Empire State Plaza, Albany, NY 12223-1350. The web site is <http://www.dps.state.ny.us>.